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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re ANTHONY T. et al., Persons Coming
Under the Juvenile Court Law.

B220798

(Los Angeles County
Super. Ct. No. CK78273)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

SERGIO T.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Donna
Levin, Referee. Affirmed.

Aida Aslanian for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County
Counsel and Timothy M. O’Crowley, Principal Deputy County Counsel, for Plaintiff and
Respondent.

INTRODUCTION

Appellant Sergio T. (father) appeals the jurisdictional and dispositional order of the juvenile court dated December 2, 2009. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Father's Family*

Prior to the commencement of this action, father lived with his wife Jennifer T. (mother or Jennifer) and four children—Emma R., Anthony T., Miguel T., and Gabriel T.—who were 6, 3, 2 and less than 1 year(s) old, respectively, when this action commenced. Emma's alleged father is Humberto B. and her mother is Jennifer. Anthony, Miguel and Gabriel are the biological children of father and mother.¹

2. *The Detention of Father's Children*

On July 28, 2009, officers of the Los Angeles Sheriff's Department arrived at the home of father and mother. They were called to investigate a physical altercation between mother and another woman. Mother allegedly threw the other woman to the floor, sat on her, and repeatedly punched her in the face, and then took an unknown object and scratched the other woman on her arms, chest and face. Mother was arrested and charged with battery with serious bodily injury. During the incident, the children were home but father was not there.

The officers discovered that the home was in a filthy and deplorable condition. The apartment smelled of urine and feces. The bathroom had running water and feces on the floor, and a backed-up toilet with feces in it. The baby jumper had dried feces in it. There was broken glass and food on the floors all over the residence and the children were running barefoot in it. There were broken dishes, dirty diapers, and trash on the floor of the kitchen. The children's bedrooms were full of dirty clothes and trash, and the

¹ The record does not clearly indicate whether Jennifer is Miguel's biological mother. In its second amended petition, the Los Angeles Department of Children and Family Services (DCFS) alleged that Rebecca S. is Miguel's biological mother.~(CT 176; but see CT 19, 58, 77, 80)~ The record does not clearly indicate whether father appeals the juvenile court's order relating to Emma. Mother, Humberto and Rebecca do not appeal.

children's clothing was dirty. The hallway had boxes of dirty diapers, broken plates, and four large holes in the wall. In the parent's bedroom there were piles of dirty clothes and trash. There was writing on the toilet and on the walls throughout the house.

The police officers transported the children to a police station, and referred the matter to DCFS. The children were detained by the DCFS from their parents.

3. *The Juvenile Dependency Petition*

On July 31, 2009, the DCFS filed a juvenile dependency petition. The petition alleged two grounds for the juvenile court's jurisdiction over the children. The first was that the court had jurisdiction over the children pursuant to Welfare and Institutions Code section 300, subdivision (a) (serious physical harm)² based on mother's violent confrontation in front of the children on July 28, 2009. The petition also alleged that the court had jurisdiction pursuant to section 300, subdivision (b) (failure to protect) based on the filthy and unsanitary condition of the family home.

The petition was amended two times. These amendments related to Humberto and mother, and do not relate to any of the issues raised in this appeal by father.

4. *The December 2, 2009, Hearing and Order*

After several continuances, the court held a hearing on December 2, 2009, regarding jurisdiction and initial adjudication. At that hearing, neither the DCFS nor father called any live witnesses. Instead, the parties submitted on the DCFS reports and other documentary evidence presented by the DCFS.

Father's counsel argued that father and mother moved out of the home they lived in on July 28, 2009. She further argued: "I don't believe that the court can find substantial risk of harm today or that conditions still exist that warrant jurisdiction by this court. Because the parents don't have a home right now, they are staying with friends, I don't believe that they are asking for the children to be placed right now, but the father would certainly submit to court jurisdiction and follow any orders that this court would make until such time the children can be returned."

² All future statutory references are to the Welfare and Institutions Code.

The children's lawyer argued that the family home "was beyond messy. It was in an uninhabitable condition. . . . I am not aware, and I have not come across anything in any of the reports, that show that it was ever cleaned up completely. [¶] I understand that father's counsel is saying that the home was cleaned and they are no longer living in that home, but there's no evidence of that in any of the reports."

The juvenile court sustained the second amended petition, in part, including the allegation that it had jurisdiction over the children pursuant to section 300, subdivision (b), based on the filthy and unsanitary condition of the children's home. The court also removed the children from the physical custody of father and mother.

After asserting jurisdiction, the court advised father that the proposed case plan required him to attend parent education and conjoint counseling with mother, and to maintain a clean and sanitary home. In response, father's counsel stated that father was "submitting" to the proposed plan, and did not present any argument against it. The court then adopted the proposed case plan, and ordered father to attend parent education and conjoint counseling with mother, and to maintain a clean and sanitary home.

CONTENTIONS

Father makes two main arguments on appeal. The first is that there was not substantial evidence to support the juvenile court's jurisdictional findings. The second is that the juvenile court's dispositional order was an abuse of discretion. We shall address each argument in turn.

DISCUSSION

1. There Was Substantial Evidence to Support the Juvenile Court's Jurisdictional Findings

We review the juvenile court's jurisdictional findings under the substantial evidence standard of review. (*In re Tania S.* (1992) 5 Cal.App.4th 728, 733.) "In a challenge to the sufficiency of the evidence to support a jurisdictional finding, the issue is whether there is evidence, contradicted or uncontradicted, to support the finding. In making that determination, the reviewing court reviews the record in the light most favorable to the challenged order, resolving conflicts in the evidence in favor of that

order, and giving the evidence reasonable inferences. Weighing evidence, assessing credibility, and resolving conflicts in evidence and in the inferences to be drawn from evidence are the domain of the trial court, not the reviewing court. Evidence from a single witness, even a party, can be sufficient to support the trial court's findings." (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450-451.)

In this case, the juvenile court found that father's children came under its jurisdiction pursuant to section 300, subdivision (b), which provides that the court has jurisdiction over a child if that child "has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child . . . or by the willful or negligent failure of the parent . . . to provide the child with adequate food, clothing, shelter, or medical treatment"

It is well recognized that a child falls within the ambit of section 300, subdivision (b), if the home where he or she resides is sufficiently filthy or unsanitary. (*In re Jeannette S.* (1979) 94 Cal.App.3d 52, 58; *In re Kristin W.* (1990) 222 Cal.App.3d 234, 251; Cf. *In re Paul E.* (1995) 39 Cal.App.4th 996, 1004 [chronically messy house is insufficient, absent unsanitary conditions, to remove child from parents' custody].) Here, the condition of the home on July 28, 2009, was both unsanitary and dangerous, and posed a real threat to the health and safety of the children. Father does not dispute that as of that date, there was substantial evidence to support the juvenile court's jurisdiction over the children based on the condition of the home.

Father instead argues that, *at the time of the hearing*, on December 2, 2009, the unsanitary and dangerous condition of the home was no longer a problem because he and mother had moved. There is a split in California law regarding the relevance of past conditions on the juvenile court's assertion of jurisdiction. In *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 (*Rocco M.*), the court held that "[w]hile evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm. [Citations.] [Fn. Omitted.] Thus the past infliction of physical harm by a caretaker,

standing alone, does not establish a substantial risk of physical harm; ‘[t]here must be some reason to believe the acts may continue in the future.’ ” However, the court in *In re J.K.* (2009) 174 Cal.App.4th 1426 (*J.K.*), criticized *Rocco M.*’s analysis, and found that the language quoted above was “clearly dicta.” (*J.K.*, at pp. 1436-1437.) The *J.K.* court held that under the plain language of section 300, subdivision (b), “a showing of prior abuse and harm is sufficient, standing alone, to establish dependency jurisdiction” (*J.K.*, at p. 1435, fn. omitted; accord *In re David H.* (2008) 165 Cal.App.4th 1626, 1642, fn. 14.)

Here, under either standard, there was substantial evidence to support the juvenile court’s jurisdictional findings. Although father argues that the deplorable condition of his residence had changed, he presented no evidence to support his claim that he had moved or that his alleged new residence was in a safe and sanitary condition.

Moreover, the condition of the home on July 28, 2009, was not an isolated incident or the result of an unusual chain of events. Father admitted to the DCFS that the home was “dirty” for six to eight months prior to the DCFS’s involvement. In addition, in December 2007, the DCFS received a referral through the Child Abuse Hotline regarding the filthy condition of the family residence. Although the DCFS closed its investigation as “inconclusive” in light of the family’s effort to remedy the problem, the episode supports the reasonable inference that father and mother have a long-term, chronic problem with keeping their residence safe, sanitary, and fit for children.

Under the totality of circumstances—the extreme condition of the residence on July 28, 2009, the chronic and long-term nature of the problem, and the absence of any evidence of amelioration prior to the December 2, 2009, hearing—there was substantial evidence to support the juvenile court’s jurisdictional findings.

2. *The Juvenile Court's Dispositional Order Was Not an Abuse of Discretion*

We review a dispositional order for abuse of discretion. (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474; *In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 454.)

Father contends that the juvenile court abused its discretion in ordering him to maintain a clean and sanitary home without providing him assistance to do so. According to father, he cannot satisfy the juvenile court's order in light of his poverty. We reject this argument.

When the juvenile court ordered father to maintain a clean and sanitary home, father did not object to that order and did not request any assistance. Father thus forfeited his argument on appeal that the juvenile court abused its discretion by ordering him to maintain a clean and sanitary home. (*In re Wilford J.* (2005) 131 Cal.App.4th 742, 754.)

Even if father did not forfeit the argument, we would reject it. Father presented no evidence of his income, expenses, assets or liabilities, or any other evidence supporting his claim that he could not afford to keep his residence clean and sanitary. We thus have no factual basis to consider father's purported excuse for the deplorable condition of his residence or his claim that he needs assistance.

At the initial hearing in this case on July 31, 2009, mother's counsel *argued* that the family was in poverty because father had a job that paid him \$10 an hour, and their monthly rent was \$1,650. This argument, however, was not *evidence* of the family's financial condition.

Moreover, even accepting counsel's representation as true, the family's financial condition still did not excuse the deplorable condition of their home. There are millions of parents in the United States and California who are struggling with poverty, yet provide a safe and sanitary residence for their children. If father was indeed financially capable of renting an apartment for \$1,650 per month, then he had the financial resources to rent and maintain a habitable residence.

In sum, father's alleged lack of financial resources was no excuse for the deplorable condition of his residence. The juvenile court did not abuse its discretion in ordering father to maintain a clean and sanitary home.

DISPOSITION

The jurisdictional and dispositional order dated December 2, 2009, is affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

CROSKEY, J.